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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/307,187	05/07/1999	KENNETH M. FRIEDLAND	112764.200	4512

24395 7590 02/24/2003

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WASHINGTON, DC 20004

EXAMINER

BACHNER, REBECCA M

ART UNIT	PAPER NUMBER
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3623

DATE MAILED: 02/24/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/307,187

Applicant(s)

FRIEDLAND ET AL.

Examiner

Rebecca M Bachner

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 04 February 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Attached.

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:


Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 1-26.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8. ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_

  
**TARIQ R. HAFIZ**  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER

***Advisory Action***

1. The amendment by the applicant will not be entered as they raise new issues that will require further consideration and search. The applicant incorrectly states that the amendments to claims 1, 25, and 26, merely incorporates language from dependent claim 18. However, claim 18 states that the assignment must be based on only one of the outputs listed. The specific definition of the rate per task as "the units processed in the task for a period of time" does not need to be the output by which the resources are assigned. Therefore, the amended claims 1, 25, and 26 add new consideration.

Furthermore, the newly amended claims 1, 25, and 26 raise new issues as the applicant now specifies that the sorting of the resources and determining a queue response to sorting where the rate per task characterizes the units processed in the task for a period of time. Claims 1, 25, and 26, did not previously have this limitation and therefore the rate per task was more broadly defined in the past claims 1, 25, and 26. The rate per task did not previously need to characterize the units processed in the task for a period of time. This feature further limited the invention and created a new issue which needs to be further considered.

2. The examiner would also like to address the applicant's argument that the examiner did not provide a reference (in the response to the applicant's original argument sent on July 24, 2002) to explain that normalization is well known in the art

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(see page 7 in applicant's response received February 11, 2003). Contrary to the applicant's assertion, the examiner did respond to the applicant's argument in the final rejection (see Response to Argument 2, sent November 5, 2002). The examiner stated that normalization is so common in the art that it was actually taught by the reference supplied by the examiner. In other words, Fields et al. does teach the process of normalization. Therefore, there was no need to create an affidavit or provide another patent which taught normalization as it was already taught by Fields et al. Fields et al. teaches the use of normalization in the abstract and column 3, lines 26-34. The examiner further gave a detailed explanation of why and how Fields et al. taught normalization (see Response to Argument 2, sent November 5, 2002).

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Rebecca Bachner** whose telephone number is 703-305-1872. The examiner can normally be reached on Monday - Friday from 8:30am to 5:00pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Tariq Hafiz** can be reached on **(703) 305-9643**.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the **Receptionist** whose telephone number is **(703) 308-1113**.

Any response to this action should be mailed to:

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***Commissioner of Patents and Trademarks***

***Washington D.C. 20231***

or faxed to:

**(703) 305-7687**      Official communications; including After Final  
communications labeled "Box AF"

**(703) 746-7306**      Informal/Draft communications, labeled " DRAFT"

Hand delivered responses should be brought to Crystal Park 5, 2451 Crystal  
Drive, Arlington, VA, 7<sup>th</sup> floor receptionist.

*RMB*

RMB

February 3, 2003